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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,546	01/25/2002	Alfred Ebbinghaus	02-139	3046

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Gregory P. LaPointe
Bachman & LaPointe, P.C.
900 Chapel Street, Suite 1201
New Haven, CT 06510-2802

EXAMINER

KUHNS, ALLAN R

ART UNIT PAPER NUMBER

1732

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,546

Applicant(s)

EBBINGHAUS, ALFRED

Examiner

Allan Kuhns

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-26 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-26 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1.The designation “previously presented” for claim 29 appears to be incorrect at this time.

2.Claims 17-26 and 29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The aspect in claims 17 and 18 that the at least partially hollow formed part is “non-slotted” lacks support in the disclosure as filed. In addition, the aspect in claim 29 that the process requires “chemical bonding between the foamed metal and the outer part by forming an alloy between the metal foam material and the material of an inner region of the outer hollow part” also lacks support in the disclosure as filed.

3.The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 18 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen et al. (3,087,807) as set forth in the previous Office action.

4.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiedler et al. (2,979,392) in view of Niebylski et al. (3,873,392) as set forth in the previous Office action.

6. Applicant's arguments filed January 6, 2005 have been fully considered but they are not persuasive. Applicant argues that the disclosure in Allen et al. at column 4, lines 52-62 sets forth the requirement for a thin slotted metal tube in order to avoid forming a radiation shield, and that the instant claims have been amended to distinguish over Allen et al. by requiring that the external formed part be "non-slotted". This is not persuasive because Allen et al. only teach at column 4, lines 55-56 that the combination of a rod of sufficient susceptibility (apparently to induction heating) and a thin slotted metal tube is "ideal". Allen et al. do not state that a non-slotted external formed part would be unusable. This is particularly so because Allen et al. view the use of slotted, thin wall cylinders or tubes in the context of induction heating, but the instant claims are "open" with regard to how heating is accomplished and/or how blowing agent is activated.

With regard to Fiedler et al., applicant argues that this patent teaches a process wherein "he" is only able to foam in a molten state which is quite different from the powder forming process claimed in independent claim 18. This is not persuasive because the relevant portion of independent claim 18 requires only "introducing into the hollow external formed part foam material and blowing agent; and activating the blowing agent so that there is formed in the external foamed part an open-cell or closed-cell metal foam with high resistance to deformation ...". Applicant also argues that there is no suggestion in Fiedler et al. as to how to use a precursor material in a closed hollow

tube. But Fiedler et al. teach at column 3, lines 55-56 that a suitable hollow article would include a hollow pipe or other suitable hollow object which could be filled with metal foam.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (571) 272-1196. The fax phone

Art Unit: 1732

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Allen R. Kuhns
ALLAN R. KUHN
PRIMARY EXAMINER AU 1732
3-30-05